

**REMARKS**

In further support of the claims presented, Applicant submit the following remarks.

**I. Status of Claims**

Claims 1–20 were originally presented for examination. In a correspondence dated February 12, 2003, Applicant was required by the Office objected to respond to a restriction requirement and elect claims to proceed with for examination. As a result of Applicant's reply dated April 11, 2003, Claims 3-5, 7 and 16 were withdrawn from consideration and claims 1-2, 6, 8-15, 17-20 were elected for examination. In a communication dated July 9, 2003, the Office properly indicates that claim 16 was omitted fro the original application, therefore claims 17-20 were renumbered as claims 16-19. Given the renumbering, the office indicates that claims 3-5, 7, 19 (formerly claim 20) and 20 (nonexistent) were withdrawn from consideration, which would left claims 1-2, 6 and 8-18 for consideration. The paper submitted by Applicant on October 9, 2003, was submitted to correct the amendment.

In the communication July 9, 2003, the Office rejects Claim 1, 2, 6, and 8-18 under 35 U.S.C. §102(b) as being anticipated by Rinkewich (US 4,432,591), Claim 1, 2, 6 and 8-17 under 35 U.S.C. §102(e) as being anticipated by Leess (US 6,318,579), and Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Rinkewich. Applicant has amended her claims and added new claims 21 and 22. Claims 1-2, 6, 8-18 and 21-22 remained pending in case.

In a communication dated June 9, 2004, claim 22 was renumbered as claim 21 and claim 21 was renumbered as claim 20. Claims 1, 8-14 and 21 have been withdrawn from consideration. Claims 15-17 and 20 remain pending in the case and are rejected.

Applicant has cancelled claims 16-17 and amended claims 15 and 20. Claims 15 and 20 now remain as the only claims pending in the case. Applicant respectfully requests reconsideration of her claims.

## II. Claim Rejections Under 35 U.S.C. §103(a)

Claims 15-17 and 20 stand rejected under 35 U.S.C. §103(a) as being as unpatentable over Lees (US 6,318,579) in view of Derman (US 2,2362,870). Lees is a trash can with an opening that can only be achieved at its top. The Examiner has indicated that Lees does not teach a door that opens down and then closes upward. Derman, which is a stationary storage cabinet, teaches a door that can be opened downward and closed in the upward position. Derman, however, is not a mobile container, is assembled from metal panels, has a fixed cover. Derman does not have handles or wheels.

The obligation of the examiner to go forward and produce reasoning and evidence in support of obviousness is clearly defined at M.P.E.P. §2142:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

M.P.E.P. §2143 sets out the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness:

1. some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2. a reasonable expectation of success; and
3. the teaching or suggestion of all the claim limitations by the prior art reference (or references when combined).

It follows that in the absence of such a *prima facie* showing of obviousness by the examiner (assuming there are no objections or other grounds for rejection), an applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443 (Fed. Cir. 1992).

Thus, in order to support an obviousness rejection, the Examiner is obliged to produce evidence compelling a conclusion that each of the three aforementioned basic

criteria has been met. In particular, the examiner must show that that the skilled would be find some suggestion or the motivation to modify Lees by installing the side door described by Derman in place of the top opening taught by Lees. Neither Lees or Derman, alone or in combination suggest that either of their respective openings could or should be replaced with the other. Derman would not benefit from a top opening for it intended use. Derman would not benefit from handles or wheels. Derman is simply a file or storage cabinet and is not meant to be mobile. Lees does not discuss why a side entry would be useful for a trash can/container.

Applicants does not agree that one of ordinary skilled in the art would be motivated by Lees or Derman to develop a plastic container that is mobile and includes a side opening that opens downward along a vertical wall. Applicant has amended her claims in hopes to further define her invention over the prior art. The amendments to the two remaining independent claims are as follows:

15. A utility basket made from a plastic material, comprising:  
a front panel, a back panel, a right panel, a left panel and a floor;  
a gap formed thereof in at least one of said front panel, said back panel , said right panel or said left panel;  
a door coupled with said at least one of said front panel, said back panel, said right panel or said left panel at said gap, wherein said door can be opened and closed to permit items to enter and exit said utility basket through said gap when said door is in an open, downward position, while maintaining said items within said utility basket when said door is in a partially closed and closed, upward position, wherein\_said door is opened as it is pushed downward into a storage position located near the bottom floor of the utility basket and the door is closed when as it is pulled upward from its storage position into a closed position, wherein the closed position comprises filling in of the gap formed in the front wall;  
a storage cavity formed within the floor and adapted for accepting and storing the door as it is moved into open and partially closed positions;  
more than one wheel coupled beneath the floor for moveably supporting the utility basket on a floor; and  
at least one handle located near the top of the at least one of said front panel, said back panel, said right panel or said left panel that is located directly opposite said gap.

20. A utility basket made from a plastic material, comprising:  
a bottom floor including a storage cavity formed within the floor and adapted for accepting and storing the door as it is moved into open and partially closed positions, and more than one wheel coupled beneath the floor for moveably supporting the utility basket on a floor;  
four walls integrated with each other and the bottom floor, said four walls further comprising\_a left wall and a right wall located above and connected to said bottom floor,

a back wall located between said left wall and said right wall and above said bottom floor, wherein said back wall is connected to said left wall, said right wall and said bottom floor, and a front wall located between said left wall and said right wall and above said bottom floor, wherein said front wall connected to said left wall, said right wall and said bottom floor, said front wall having a gap formed therein; and

a front door coupled within the gap in said front wall, wherein said front door is opened and closed vertically within the gap to thereby permit items to enter and exit said utility basket through said gap when said front door is in an opened position, while maintaining said items within said utility basket when said front door is in a partially closed or closed position, wherein said retractable front door is fully opened as it is pushed downward within the cavity into a storage position located at the bottom floor of the utility basket and the front door can be adjusted to different positions up to full closure when it is pulled upward from the storage position towards a closed position;

a storage cavity formed within the floor and adapted for accepting and storing the front door as it is moved into open and partially closed positions;

more than one wheel coupled beneath the floor for moveably supporting the utility basket on a floor; and

at least one retractable handle located near the top of the at least one of said front panel, said back panel, said right panel or said left panel that is located directly opposite the at least one panel that has said gap.

Applicant respectfully traverses the rejection in light of her remarks and the new amendments.

### III. Conclusion

In view of the foregoing discussion, Applicants have responded to each and every objection and rejection of the Official Office Action. Applicant has clarified the structural distinctions of the present invention by amending the Specification and the Claims. No new subject matter has been introduced as a result of this amendment. Applicant respectfully submits that the foregoing discussion does not present new issues for consideration and that no new search is necessitated.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections to her claims under 35 U.S.C. § 103(a), and requests issuance of the present application. The Examiner is encouraged to contact the Applicant's representative at the below listed telephone number during prosecution of the application regarding the submitted amendments and remarks, and especially before issuing any Final action on the case.

Respectfully submitted on behalf the Applicant by,



Luis M. Ortiz

Attorney

Registration No. 36,230

Ortiz & Lopez, PLLC

P.O. Box 4484

Albuquerque, NM 87196

(505) 314-1311